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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re A.R., a Person Coming Under the
Juvenile Court Law.

B205236
(Los Angeles County
Super. Ct. No. CK69107)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff,

v.

C.J.,

Defendant and Appellant;

A.L.R.,

Defendant and Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County. Marilyn Martinez, Juvenile Court Referee. Affirmed.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and Appellant.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Respondent.

C.J. (Mother) appeals from a dispositional order placing her daughter, A.R. (Child), born in February 2007, with Child's presumed father (Father), instead of with the maternal grandparents and half sister. We affirm the judgment because Mother fails to show that the juvenile court erred in placing Child with Father under Welfare and Institutions Code section 361, subdivision (c)(1) or section 361.2, subdivision (a).¹

¹ Unspecified statutory references are to the Welfare and Institutions Code.

Section 361, subdivision (c) applies to custodial parents, that is, parents who *resided with the child* at the time the dependency petition was filed. It provides in pertinent part: "A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive, and, in an Indian child custody proceeding, paragraph (6): [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . . The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm."

Section 361.2, subdivision (a) applies to noncustodial parents and provides: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child."

BACKGROUND

After an incident of domestic violence between Mother and Father on July 10, 2007, resulting in Mother's arrest and incarceration, Child was released to Father and Child's 11-year-old half sister was detained and placed with the maternal grandmother. A police officer reported that the parents were engaged in an altercation because Father wanted to take Child to Victorville to visit with the paternal grandmother for a few days; after some pushing and shoving between the parents, Father left on foot. Mother placed Child in her car and pursued Father in her car, trying to run him over. Mother hit Father with her car and he received some minor cuts to his hands. When Mother drove off, she yelled that she would kill herself and Child.

An original petition was filed on July 13, 2007. At the detention hearing on July 13, 2007, Father informed the court that he had signed the Child's birth certificate at the hospital; Child's birth certificate and social security card showed that Child bore his last name. The juvenile court found Father to be a presumed father and ordered Child placed with Father pending the next hearing.²

On August 2, 2007, the Los Angeles County Department of Children and Family Services (DCFS) filed a jurisdiction and disposition report stating that Father admitted he has a criminal history of carrying a concealed weapon in 1994, possession of marijuana for sale in 2000, and transporting or selling a controlled substance in 2005. Father also admitted he had been a member of the Rolling Thirties gang when he was younger, but was no longer involved in gang activity. Father also was on probation for his felony conviction for transporting drugs.

On August 2, 2007, the original petition was dismissed and DCFS filed a first amended petition alleging that Child was a dependent of the court pursuant to section

² Mother remained incarcerated during the proceedings below. She has a criminal history of convictions for petty theft and second degree burglary, and an arrest in 2006 for threatening Father with a knife, but the 2006 charge involving Father was dismissed.

300, subdivision (b) (failure to protect) based on her parents' domestic altercations in her presence, including the July 10, 2007 altercation which resulted in Mother's arrest, and based on Mother's current abuse of marijuana and her abuse of marijuana during her pregnancy with Child.

At the hearing on August 2, 2007, the court ordered Child placed with the maternal grandparents, who were also caring for Child's older half sister. DCFS was ordered to assess the home of the paternal grandmother for Child's placement and both Father and the paternal grandmother were afforded frequent monitored visits with Child. Father was ordered to submit to random drug testing.

DCFS's October 1, 2007 addendum report stated that DCFS would approve the paternal grandmother's home for placement if Father moved out of the home, and Father stated that he was willing to move out of the home. Noting the strong bond between Child and her older half sister, DCFS recommended that Child remain placed with the maternal grandparents. Father continued to submit to random drug tests, with negative results. On October 1, 2007, the juvenile court ordered unmonitored visits, including overnight visits, for the paternal grandmother, who also was permitted to monitor Father's visits, but Father was not permitted to live in the paternal grandmother's home. Later in October, Father enrolled in domestic violence and parenting programs.

At the jurisdictional hearing on October 30, 2007, Child was declared a dependent of the juvenile court pursuant to section 300, subdivision (b), based on her parents' domestic altercations and Mother's abuse of marijuana. Pending the dispositional hearing, scheduled for December 18, 2007, Child was to remain detained with the maternal grandmother and Father was afforded visits at least three times per week.

A contested dispositional hearing was held on December 18 and 19, 2007. Father testified that he could not afford to pay for both his domestic violence and his parenting classes, so in November 2007 he dropped the domestic violence classes after attending about four or five and paid for the entire parenting program; after completing the remaining three classes in the parenting program, he planned to resume the domestic violence program. Father was then living with the paternal great grandmother and

training for a fire-fighting job. According to Father, he and Mother lived with Child from February to May or June 2007, when they split up; Child then lived with Mother or the maternal grandmother. But in early July 2007, Mother asked Father to watch Child while Mother worked; when Child was detained on July 10, Father was providing day care for her and living with the paternal grandmother. During the period in July when Mother worked, Child would sometimes stay overnight with him and sometimes with Mother. But Child lived with Father from July 10 to August 2, 2007.

Father tested negative on six occasions, but admitted that he missed two drug tests in November 2007 because he mistakenly believed that he was no longer required to drug test. Father also admitted that he refused to attend several visits monitored by DCFS because the visits were scheduled on too short notice. According to the maternal grandmother, Father cut his visits short on four or five occasions because he said that Child was sleepy.

Father testified that from February to July 2007, he bought diapers for Child and paid for the motel rooms where he, Child, and Mother were living. According to Father, he and Mother were involved in one prior domestic violence incident in 2006, when Mother was arrested for cutting him with a knife.

Mother testified that Father did not provide any financial support for Child and cared for her for only one week in July 2007 when the day care was closed. Mother believed that Father could not care for Child because he had worked for only two weeks during the two and one-half years she had known him; the “only thing he can do is bathe her, feed her, change her, put her to sleep. Financially, no.” Mother also blamed Father for the domestic violence incidents, claiming that he was the aggressor with respect to the incident in 2006 and two incidents in May and July 2007. Father denied any incident in May 2007.

Admitted into evidence at the dispositional hearing was an October 1, 2007 letter from Father’s probation officer stating that there was no record of Father’s gang involvement and that if he were deemed to be a gang member by the probation department, he would be supervised under a specialized intensive gang unit.

DCFS, Mother and the attorney for Child argued that Child should remain placed with the maternal grandmother. Father's attorney argued that under section 361, subdivision (c) (see fn. 1, *ante*), there was no clear and convincing evidence that releasing Child to Father's custody posed a substantial danger to her health and safety and there were reasonable means by which Child could be protected without removal from Father, including the requirements that Father reside with the paternal grandmother, who offered to assist with child care, and that Father not monitor Mother's visits.

The juvenile court ordered that Child be removed from Mother's custody but not from Father. Child was ordered released to Father with Family Maintenance Services and on the condition that Father and Child reside with the paternal grandmother or another DCFS-approved residence. The court found Mother's testimony regarding the domestic violence incidents not to be credible and that Mother "takes no responsibility for her conduct." The court also found no evidence that Father was currently or recently involved in gangs.

The juvenile court reasoned that the good care provided to Child by the maternal grandparents "is not a basis to find by clear and convincing evidence that a child should not be with a parent. [¶] Mother . . . testifie[d] that the main reason this child shouldn't be with her father is because he has not provided any financial support. All he can do is bathe his child, feed his child, change the child's diapers, and play with the child. That's exactly what a parent is supposed to do. And he obviously is able to do that. [¶] And whatever [Mother] thinks about [Father], she certainly thought he could take good care of [Child] because just prior to the detention, she had made an arrangement for [Father] to take full responsibility for the care of [Child] for a week. [¶] The court must find substantial risk of danger by clear and convincing evidence. Counsel present some concerns: a no-show [drug] test, ongoing domestic disputes between [the parents], an angry relationship. While there may be concerns, these concerns do not rise by clear and convincing evidence to substantial danger."

The court also found that there were available safeguards for Child's safety upon her release to Father: "[O]ne of them is that these two parents shall not reside together,

and Mother shall not visit in Father's home, and Father shall not monitor [visits] for Mother. [¶] If we remove her from the equation, then there will not be any angry situations that could result in further domestic altercations. [¶] Other safeguards, of course, are clean tests, compliance with probation, residing in a residence and with [the paternal grandmother], who has been assessed to be appropriate and approved."

Mother was afforded reunification services and monitored visitation. Father was ordered to attend two months of random drug testing, verify his sobriety and a stable residence, comply with all terms of his probation, and to reside in the home of the paternal grandmother or another DCFS-approved residence.

Mother appeals from the dispositional order, challenging Child's placement with Father on the following grounds: (1) Father is not entitled to placement because he is only an alleged father and not a presumed father; (2) removal of Child from Father was required under section 361, subdivision (c)(1) because Father was not a custodial parent; and (3) the court erred in placing Child with Father under section 361.2, subdivision (a).

DISCUSSION

"In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the [order], if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.'" (*In re David H.* (2008) 165 Cal.App.4th 1626, 1633.)

Because the record shows that the juvenile court found Father to be a presumed father, there is no support for Mother's contention that he is only an alleged father.

Mother contends that Child did not reside with Father and therefore Father was not entitled to the benefit of section 361 subdivision (c)(1). But Child was released to Father on July 10, 2007, and Child lived with Father at the time the original petition was filed on July 13, 2007, and up to August 2, 2007, when Child was placed with the maternal

grandparents. Substantial evidence thus supports the juvenile court's implied finding that Father was a parent "with whom the child resides at the time the petition was initiated" within the meaning of section 361, subdivision (c)(1). (See fn. 1, *ante*.)

Mother claims that section 361, subdivision (c)(1) requires removal from *both Mother and Father* because both were offending parents under section 300, subdivision (b), based on their participation in the July 10 incident of domestic violence. But Mother cites no authority that section 361, subdivision (c)(1) requires removal from both parents when they were not living together at the time the dependency petition was initiated, had no plans to resume living together, and there was not clear and convincing evidence that returning Child to Father posed a substantial danger to her health and safety.

Mother misplaces reliance on *In re Andres G.* (1998) 64 Cal.App.4th 476 (*Andres G.*). There, the Fourth District Court of Appeal disapproved of a nonstatutory local juvenile court practice of declaring a dependency, finding substantial danger and ordering the dependent child removed from the physical custody of his or her parents, placing the minor under the supervision of the probation officer, and then directing the probation officer to place the minor back in the same parental home from which the child was removed. The court was "troubled by, what at least appears to be, the artifice of making a finding that it is necessary to remove a child from the physical custody of the parents, and, thus, place custody with Department, and then immediately place the child physically back in the home. Not only does such a procedure entail an unseemly inconsistency, its effect is to either remove children from the home under circumstances the Legislature did not authorize or to place children in a dangerous setting." (*Id.* at p. 481.)

In contrast to *Andres G.*, the juvenile court here expressly *declined to find* that the return of Child to Father posed a substantial danger to her health and safety. The court's order placing Child in Father's custody in the absence of such substantial danger is a result specifically contemplated by section 361 and does not constitute an unauthorized disposition or create an "unseemly inconsistency." (*Andres G.*, *supra*, 64 Cal.App.4th at p. 481.)

We also reject Mother’s argument that reversal is required under section 361.2, subdivision (a). Mother contends that section 361.2 applies only to “nonoffending parents” and Father is an offending parent. But the juvenile court did not base its ruling on section 361.2.

Mother argues that there was clear and convincing evidence that placement with Father would cause detriment to Child under section 361.2, subdivision (a), because Child would be separated from her older sibling. But Mother cites no authority to support her implied claim that a sibling relationship trumps a parent’s right to custody under section 361, subdivision (c) or section 361.2, subdivision (a). Mother also applies the wrong standard of review, as we must uphold the juvenile court’s implied finding of *lack of detriment* if supported by substantial evidence. Mother fails to establish that the juvenile court’s implied finding of lack of detriment is not supported by substantial evidence.

Finally, Mother contends that placement with Father violated the relative placement preference of section 361.3, subdivision (a).³ But Child was not removed from the custody of Father under section 361, so section 361.3 did not come into play.

³ Section 361.3, subdivision (a) provides in pertinent part: “In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. . . .”

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

DUNNING, J.*

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.